

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into the Gas Market Activities of Southern California Gas Company, San Diego Gas and Electric, Southwest Gas, Pacific Gas and Electric, and Southern California Edison and their impact on the Gas Price Spikes experienced at the California Border from March 2000 through May 2001.

Investigation 02-11-040  
(Filed November 21, 2002)

Order Instituting Investigation whether San Diego Gas & Electric Company, Southern California Gas Company and their holding company, Sempra Energy, respondents, have complied with relevant statutes and Commission decisions, pertaining to respondents' holding company systems and affiliate activities.

Investigation 03-02-033  
(Filed February 27, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING  
DENYING RECONSIDERATION OF RULING ON  
MOTION CONCERNING DISCOVERY COSTS**

Sempra Energy Trading Corporation (SET) filed a motion to require Southern California Edison (SCE) to pay SET's costs incurred in searching and retrieving e-mail records for certain SET employees pursuant to a subpoena duces tecum served by SCE. (SET Motion of February 25, 2004.) On April 15, 2004, the undersigned Administrative Law Judge (ALJ) (Law and Motion) denied SET's motion, provided the rationale for the decision, and indicated that SET must "recover and deliver the subpoenaed e-mails to SCE without cost to SCE." ALJ Ruling at 8 (April 15, 2004). On May 11, 2004, SET filed its Motion by Non-party, for Reconsideration of ALJ Thorson's Ruling on Motion

Concerning Discovery Costs; and, if denied, Motion for Order Referring the Matter to the Commission for Determination Pursuant to Rule 65. After obtaining filing extensions from the Assigned ALJ, SCE filed its response to SET's motion for reconsideration on June 1, 2004. With the permission of the Assigned ALJ, SET filed its reply on June 15, 2004.

The reasoning set forth in the April 15<sup>th</sup> ALJ Ruling, combined with the arguments advanced by SCE in its pleading, amply support the initial ruling. The initial ruling was based in part on the special scrutiny afforded to transactions between public utilities and affiliated corporations (some unregulated) that may result in anticompetitive practices. Since the April 15<sup>th</sup> ALJ Ruling, the California Court of Appeal has endorsed this reasoning in holding that the Commission has limited jurisdiction over holding companies when that jurisdiction is cognate and germane to utility regulation. In *PG&E Corp. v. Public Utilities Commission*, 118 Cal. App. 4<sup>th</sup> (1<sup>st</sup> Dist. May 21, 2004), the court upheld the Commission's authority to "enforce the holding company conditions that were the preconditions to formation of the holding companies." (*Id.* at 1201.) The court continued to say, "the holding companies are much more than just entities 'doing business with' public utilities. Concerns about potential abuses in the relationship between a holding company and its utility subsidiary led to the imposition of holding company conditions. Those concerns remain ongoing." (*Id.*)

SET's motion for reconsideration of the issue of discovery costs is denied. After consultation with the Assigned Commissioner, the motion to refer the allocation of discovery costs issue to the Commission is also denied.

**IT IS SO RULED.**

Dated June 25, 2004, at San Francisco, California.

/s/ JOHN E. THORSON

---

John E. Thorson

Law and Motion Judge  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion for Reconsideration of Ruling on Motion Concerning Discovery Costs on all parties of record in this proceeding or their attorneys of record.

Dated June 25, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS  
Elizabeth Lewis

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

\*\*\*\*\*

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

I.02-11-040, I.03-02-033 JET/hl2

(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at  
least three working days in advance of the event.